

**CITY OF HAYWARD**  
**AGENDA REPORT**

AGENDA DATE 09/23/03

AGENDA ITEM 5

WORK SESSION ITEM \_\_\_\_\_

**TO:** Mayor and City Council

**FROM:** Director of Community and Economic Development

**SUBJECT:** Blue Rock Country Club – Hayward 1900, Inc. (Applicant/Owner) – Request for Extension of Precise Development Plan No. 97-120-02

**RECOMMENDATION:**

It is recommended that the City Council rely on the previously approved environmental documentation, adopt the attached resolution approving an extension of time within which a building permit application may be accepted.

**DISCUSSION:**

The City Council unanimously approved an addendum to the Final Supplemental Environmental Impact Report and a Precise Development Plan for Blue Rock Country Club in September 2002. A building permit application is required to be submitted and accepted for processing within one year of the date of approval of a Precise Development Plan; otherwise, the developer may apply for an extension of time within which to submit the application. A maximum of two, 1-year extensions may be approved by the City Council. Even though there is a valid Development Agreement and Vesting Tentative Map for the project that will not expire soon, an extension of time is necessary for the 2002 Precise Development Plan.

In making a decision on approval of an extension, the following must be considered:

- The cause for delay in submission of the Precise Development Plan,
- Evidence of the applicant's ability to adhere to the proposed revised development schedule; and
- Whether the approved Precise Development Plan is in conformance with existing development regulations.

The applicant submitted the following information in support of an extension.

Cause for Delay

Since the 2002 approvals, the developer has been developing construction plans for a new elementary school and plans for complying with mandated mitigation measures imposed to ensure protection of wildlife habitat. In addition, several legal actions involving the City of Hayward,

the Hayward Unified School District, federal agencies and/or Blue Rock have effectively precluded site and building construction. One suit has been favorably resolved, while two are outstanding. They are as follows:

Easement Issues: An easement had to be obtained relative to lands associated with the Carden property and the new elementary school, which involved the Hayward Unified School District's Eminent Domain proceedings and other Blue Rock access issues.

Hayward Area Planning Association et al v. City of Hayward (Hayward 1900, Inc., Roman Catholic Bishop of Oakland, East Bay Regional Park District – Real Parties in Interest): Based on alleged changes to the project and its circumstances, this HAPA lawsuit sought to overturn the City's 2002 actions under the California Environmental Protection Act ("CEQA"). The Superior Court ruled in favor of the City of Hayward et al on June 4, 2003. HAPA has filed a notice of appeal of this ruling.

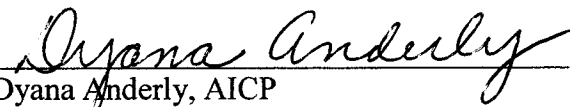
Hayward Area Planning Association et al v. Norton et al (Hayward 1900, Inc. as Defendant-Intervener): HAPA brought this suit against the federal government, claiming that the federal agencies (Army Corps of Engineers and the Fish and Wildlife Service) arbitrarily and capriciously issued a Section 404 wetlands fill permit for Blue Rock. At a hearing in late June 2003, the judge indicated that she would issue a final decision shortly.

Assuming the legal matters are resolved, Blue Rock proposes to proceed with resolving final design issues and obtaining grading permits so as to be able to begin major grading activity in the spring of 2004. In the interim, the City Engineer is reviewing a grading permit that provides for the relocation of three cattle ponds and the improvement of three cattle ponds. This work will occur between October 1 and 15 of this year and is a required mitigation measure for the preservation of the red legged frog. A biological monitor will be on site to observe the grading and relocation of the frogs.


In accordance with the requirements of the City's Development Agreement section of the Municipal Code, the developer has applied for a review to determine whether or not the developer has complied with the terms and conditions of the Development Agreement. The Planning Director is charged with the responsibility of making that determination. Based on the information provided, the Planning Director finds that the terms and conditions of the Agreement have been met during the most recent review period.

There has been no change in circumstances to the Precise Development Plan since September 2002, which would require further environmental review, nor have existing development regulations changed which could conflict with the project. Because the criteria are met to support the extension of the precise development plan, staff recommends that City Council approve of the extension.

Prepared by:

  
Dyana Anderly, AICP  
Planning Manager

Recommended by:

  
Sylvia Ehrental  
Director of Community and Economic Development

Approved by:

  
Jesús Armas, City Manager

Exhibit:      Draft Resolution

# DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

*True*  
*8/25/03*

RESOLUTION APPROVING AN EXTENSION OF TIME  
WITHIN WHICH A BUILDING PERMIT APPLICATION  
MAY BE ACCEPTED FOR PRECISE DEVELOPMENT PLAN  
NO. 97-120-02

WHEREAS, in September 2002 the City Council approved an addendum to the FSEIR and a Precise Development Plan for Blue Rock Country Club which requires that a building permit application be submitted and accepted within one year of the date of approval; otherwise a developer may apply for an extension of time within which to submit the application; and

WHEREAS, staff has determined that an extension of time is necessary for the developer to bring construction plans into compliance with mandated mitigation measures which ensure protection of wildlife habitat; several legal actions have precluded site and building construction; and there has been no change in circumstances since the approval of the Addendum to the FSEIR.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that for the above reasons a 12 month extension of time within which a building permit application is accepted for Precise Development Plan No. 97-120-02, is hereby approved.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2003

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_

City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward